

CHARTER OF THE TOWN OF KITTERY*

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* Editor's note—The charter of the town as enacted by Private and Special Laws, Chapter 66 of 1967, as amended from time to time, is set out herein. Amendments to the charter are cited in parentheses following the section amended. The absence of such a citation indicates that the provision has not been amended and is as originally enacted.

Article I. Grant of Powers to the Town

Sec. 1.01. Incorporation.

The inhabitants of the Town of Kittery, within the limits as now established or as hereafter established in the manner provided by law, shall continue to be a body politic and corporate by the name of the Town of Kittery, and shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon said town as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable bylaws, regulations and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof, to be recovered for such uses as said by-laws, regulations or ordinances shall provide. (Amended by vote of the people 10-4-94)

Sec. 1.02. Construction.

The powers of the town under this charter shall be construed liberally in favor of the town, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power stated in this article.

Sec. 1.03. Intergovernmental relations.

The town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more municipalities, states or civil divisions or agencies thereof, or the United States or any agency thereof.

Sec. 1.04. Casinos prohibited.

No person, firm, corporation, association, organization, or any other entity may operate a commercial facility which conducts, holds or operates a game of chance, game of skill, electronic video machine, slot machine or any other type of gambling activity. No business license or land use regulation shall permit any of the above stated prohibitions within the Town of Kittery.

No person, firm, corporation, association, organization, or any other entity shall hold, conduct or operate high-stakes Beano or Bingo or a commercial Beano-Bingo hall within the Town of Kittery.

Nothing herein shall be construed to prohibit or limit any non-profit, low-limit game of chance to pursuant to any state license issued to a bona fide non-profit charitable, educational, political, civic, recreational, fraternal, patriotic, religious or volunteer fire department pursuant to State law. (Added by vote of the people 6-11-02)

Sec. 1.05. Qualifications for municipal office.

Except as otherwise required by statute or charter, the provision of Title 30-A, Section 2526, sub-section 3 requiring state residency as a qualification for municipal office does not apply. (Added by vote of the people 11-4-14)

Article II. Town Council**Sec. 2.01. Officers.**

The members of the town council shall be and constitute the municipal officers of the Town of Kittery for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers under the laws of this State.

Sec. 2.02. Composition and eligibility.

- (1) Composition. The town council shall be composed of 7 members, elected at large by the qualified voters of the town.
- (2) Eligibility. Only qualified voters who at all times during their term of office shall be and remain residents of the town, shall be eligible to hold the office of councilor. (Amended by vote of the people 10-4-94)

Sec. 2.03. Election and terms.

The regular election of council members shall be held each year in the manner provided in Article X.

Each member shall be elected for a term of 3 years and shall serve until his successor is elected and qualified, except that, at the first election after adoption of this charter, the 3 members-elect receiving the largest number of votes shall serve until October of 1970, the 2 members-elect receiving the next largest number of votes shall serve until October of 1969, and the 2 members-elect receiving the next largest number of votes shall serve until October of 1968. In case any candidates receive an equal number of votes, their relative positions shall be determined by lot. (Amended by vote of the people 10-4-94)

Sec. 2.03-A. Recall.

- (1) Applicability. A member of the town council may be recalled and removed from office by the qualified voters of the Town as hereinafter provided. (Added by vote of the people 6-11-02)
- (2) Petition by voters. On the written petition of a number of voters equal to at least 15% of the number of qualified voters registered at the time of the most recent municipal regular election, the town council

shall, by order, provide for a special recall election as hereinafter provided. (Added by vote of the people 6-11-02)

- (3) Petition procedure; procedure after filing. Petition procedures shall be those set forth in 30-A, MRSA, Sec. 2102, subsections 3 and 4, or any successor statute, except:

- (a) The required wording in subsection 3.B.(1) shall be as follows:

“Town of Kittery”

“Each of the undersigned voters respectfully requests the town council to provide for a special election on the question of recalling and removal of (insert name and address) from the office of town councilor.” (Added by vote of the people 6-11-02)

- (b) This required wording is to be followed by a statement of the reason(s) why recall and removal is sought. (Added by vote of the people 6-11-02)
- (c) Any notice required to be furnished to the petitioners’ committee must also be given the councilor whose recall is sought, by the same means and in the same time frame. (Added by vote of the people 6-11-02)
- (4) Calling of election. Within 20 days of receiving the clerk’s certificate of sufficiency, or of the town council’s determination of sufficiency, the council shall, by order, call for a special election on the recall question, such election to be held not earlier than 45 days nor later than 60 days after the order. (Added by vote of the people 6-11-02)
- (5) Form of ballot. The question submitted to the voters shall be in substance as follows:

“Do you favor recalling and removing (name and address)
from the office of town councilor?” YES NO
(Added by vote of the people 6-11-02)

- (6) Count of ballot. For any councilor to be recalled and removed from office, both the following criteria must be satisfied:
- (a) The majority of valid votes cast must favor recall and removal.
- (b) The total number of valid votes cast must equal or exceed 40% of the number of voters registered at the time of the most recent municipal regular election. (Added by vote of the people 6-11-02)
- (7) Limitation on recall. During the first 6 months of any term, no councilor shall be subject to a recall election nor shall a councilor be subject to more than 2 recall elections in any term. (Added by vote of the people 6-11-02)

Sec. 2.04. Compensation; expenses.

Council members shall each be entitled to receive \$20.00 for each regular and/or special meeting attended, plus their actual and necessary expenses. Such compensation may be changed by ordinance, but no ordinance increasing such compensation shall become effective until the date of commencement of the terms of the councilors elected at the next regular election, provided that such election follows the adoption of such ordinance by at least 6 months. (Ord. No. 1-74, 3-11-74; amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 2.05. Chairperson.

- (1) Election. At its first meeting or as soon thereafter as practicable, the council shall elect, by majority vote of the entire seven-member council, one of its members to serve as chairperson for the ensuing year.
- (2) Vacancy. The council shall fill any vacancy that may occur in the office of chairperson, from among its members, for the unexpired term by a majority vote of the council. In the temporary absence or disability of the chairperson, the council may elect from among its members, a chairperson pro tempore who shall exercise all the powers of the chairperson during such temporary absence or disability of the chairperson.
- (3) Duties. The chairperson shall preside at meetings of the council, shall be recognized as the head of the town government for all ceremonial purposes and be the Governor for purposes of military law, but shall have no administrative duties. The chairperson shall be entitled to vote on council matters and that vote shall be counted as a vote of the other members of the council. (Amended by vote of the people 10-4-94)

Sec. 2.06. General powers and duties.

All powers of the town shall be vested in the council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the town by law.

Sec. 2.07. Enumeration of powers.

- (1) The council shall have the power to appoint, suspend, and remove the town manager, but suspension or removal shall be in accordance with Section 3.02 of this charter. The council shall have the power to appoint, and to remove for cause after notice and hearing, all members of boards created by statute, ordinance, this charter or by council action unless otherwise provided therein.
- (2) All appointments of voting members, regular and/or ad hoc, are made from among the qualified resident voters of the town and each appointee during term of office must remain a qualified resident voter in order to retain appointment. Applicants for the planning board and board of appeals must be interviewed by the council, with at least a quorum present, before any vote is taken by the council on the appointment.
- (3) The council shall have the power to enact, alter and repeal ordinances; adopt resolutions, codes and rules; and issue proclamations.
- (4) The council shall have the power to, by ordinance, create, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter. The council, by ordinance, may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency.
- (5) The council shall provide for an independent annual audit of all town accounts and may provide for such additional audits as it deems necessary. Such audits shall be made by the State Department of Audit or by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its offices.
- (6) The council shall provide for a review of the town charter at intervals not to exceed 10 years. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; amended by vote of the people 6-10-08; amended by vote of the people 11-3-09)

Sec. 2.08. Induction of council into office.

At the next regular meeting following the day of election, or as soon thereafter as practicable, all council members-elect shall be sworn to the faithful discharge of their duties by the town clerk or by any other person authorized to administer an oath. (Amended by vote of the people 10-4-94)

Sec. 2.09. Judge of qualifications.

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 2.12, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A council member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the Superior Court.

Sec. 2.10. Procedure.

- (1) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the chairperson or of 4 or more members and, when practicable, upon no less than 12 hours' notice, to each member. All meetings shall be public. However, the council may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the manager or qualified officers and advisors concerned with the matter to be discussed, any matter which qualifies under State statute, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the council until the matter is placed on the agenda.
- (2) Rules and journal. The council shall, by resolution, adopt its own rules and order of business. The town clerk or deputy town clerk shall give notice of special council meetings to its members and to the public, and shall keep a journal of its proceedings. This journal shall be a public record.
- (3) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. At least 12 hours' notice of the time and place of holding such adjourned meetings shall be given to all members who were not present at the meeting from which adjournment was taken and to the public. No action of the council, except as otherwise provided in the 2nd sentence of this subsection and in section 2.12, subsection 3, shall be valid or binding unless adopted by the affirmative vote of 4 or more members of the council. (Amended by vote of the people 10-4-94)

Sec. 2.11. Prohibitions.

- (1) Holding other office. Except where authorized by law, no councilor shall hold any other office or employment with the school department or in a town department during the term for which the councilor was elected to the council, and no former councilor shall hold any compensated appointive town or school office or employment until one year after the expiration of the term for which the councilor was elected.
- (2) Appointments and removals. The council may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of any town administrative officers or employees whom the manager or any of his subordinates are empowered to appoint, but neither the coun-

cil nor any of its members shall in any manner dictate the appointment or removal of any such officers and employees.

- (3) Interference with administration. The council or its members shall deal with town officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately. This subsection does not prevent the town council from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any official or department, or any matter relating to the welfare of the town. (Amended by vote of the people 10-4-94)

Sec. 2.12. Vacancies; forfeiture of office; filling of vacancies.

- (1) Vacancies. A vacancy in a council office shall occur by one or more of the following means:
 - (a) Nonacceptance;
 - (b) Resignation;
 - (c) Death;
 - (d) Failure to qualify for the office within 10 days after written demand by the municipal officers;
 - (e) Failure of the municipality to elect a person to office;
 - (f) Forfeiture of office;
 - (g) Recall and removal; or
 - (h) Any other manner authorized by law or this charter.
- (2) Forfeiture of office. A councilor shall forfeit office if the councilor:
 - (a) Lacks any qualification for the office prescribed by this charter or by law,
 - (b) Violates any express prohibition of this charter,
 - (c) Is convicted of a crime involving moral turpitude, or
 - (d) Fails to attend 3 consecutive regular meetings of the council without being excused by the council.
- (3) Filling of vacancies. If for any reason a vacancy shall exist in the membership of the town council more than 6 months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article X. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 2.13. Action requiring an ordinance.

In addition to other acts required by law or by specific provisions of this charter to be done by ordinance, those acts of the town council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any town department, office or agency;
- (2) Provide for a fine or establish a rule or regulation by which a fine is imposed;
- (3) Adopt with or without amendment ordinances proposed under the initiative power; and
- (4) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article XI with respect to repeal of ordinances reconsidered under the referendum power.

Acts other than those referred to in the preceding paragraph of this section may be done either by ordinance or by resolution. (Amended by vote of the people 6-11-02)

Sec. 2.14. Ordinances in general.

- (1) Form. Every proposed ordinance must be introduced in writing and in the form required for final adoption. No ordinance may contain more than one subject which must be clearly expressed in its title. The enacting clause must be "The Town of Kittery hereby ordains...". Any ordinance which repeals or amends an existing ordinance or part of the town code must set out in full the ordinance, sections or subsections to be repealed or amended; indicate matter to be omitted by enclosing it in brackets or by strikeout type and indicate new matter by underscoring or by italics. (Amended by vote of the people 11-3-15)
- (2) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the council. The town clerk shall provide a copy to each council member and to the manager and shall make a reasonable number of copies available in the office of the town clerk, and shall, unless directed otherwise pursuant to State Statute, publish on the Town's web site, and post in a public place in the Municipal Offices, the Kittery U.S. Post Office(s), and the Community Center, a notice setting out the time and place for a public hearing thereon. The public hearing must follow the publication/posting by at least 7 days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time. All persons interested will have an opportunity to be heard at the hearing. After the hearing, the council may adopt the ordinance with or without amendment or reject it. (Amended by vote of the people 11-3-15)
- (3) Effective date. Except as otherwise provided in this charter, every adopted ordinance becomes effective at the expiration of 30 days after adoption or at any later date specified therein. (Amended by vote of the people 11-3-15)

Sec. 2.15. Emergency ordinances.

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances in the form and manner prescribed for ordinances generally, but such emergency ordinances may not levy taxes or authorize the borrowing of money except as provided in section 6.09, subsection 2. An emergency ordinance may be adopted with or without amendment or rejected, but the affirmative vote of at least 5 members shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify.

Every emergency ordinance, except one made pursuant to section 6.09, subsection 2, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances. (Amended by the vote of the people 11-5-13)

Sec. 2.16. Codes of technical regulations.

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that:

- (1) The requirements of section 2.14 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the town clerk pursuant to section 2.17, subsection 1.

Copies of any adopted code of technical regulations shall be made available by the town clerk for distribution or for purchase at a price fixed by the council.

Sec. 2.17. Authentication and recording; codification; printing.

- (1) Authentication and recording. The town clerk shall authenticate by his or her signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council.
- (2) Codification. Within 3 years after adoption of this charter and at least every 10 years thereafter, the council shall provide for the preparation of a general codification of all town ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or looseleaf form, together with this charter and any amendments thereto, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the Kittery Town Code. Copies of the code shall be furnished to town officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.
- (3) Printing of ordinances and resolutions. The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the council. Following publication of the first Kittery Town Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code then currently in effect and shall be suitable in form for integration therein.

Article III. Town Manager

Sec. 3.01. Appointment; qualification; compensation.

The town manager shall be chosen by the council solely on the basis of character, executive and administrative qualifications with special reference to actual experience in, or knowledge of, accepted practice in respect to the duties of office hereinafter set forth, and may or may not be a resident of the Town of Kittery or of the State of Maine when appointed, but, while in office, may reside outside the Town or State only when specified by contract. The council shall appoint a town manager for an indefinite term unless otherwise specified by contract, and shall fix the manager's compensation. (Amended by vote of the people 10-4-94)

Sec. 3.02. Removal of manager.

The town manager may be removed or suspended for cause by the council in accordance with the provisions of Maine law.

- (1) The council shall file with the town clerk a written preliminary resolution setting forth the specific reasons for the proposed removal, a copy of which shall be delivered to the manager within 10 days of filing.
- (2) The manager may, within 20 days of receiving the resolution, reply in writing and may request a public hearing.
- (3) Upon request for a public hearing the council shall hold one not earlier than 10 days after the request is filed nor later than 30 days.
- (4) After the public hearing, or at the expiration of the time permitted the manager to request the public hearing, if no such request is made, the council may adopt or reject the resolution of removal.
- (5) The council may suspend the manager from duty in the preliminary resolution, but in no event shall the manager's salary be affected until the final resolution of removal has been adopted.

- (6) In the event of any conflict with the provisions of Maine law concerning the removal of the manager, the provisions of Maine law shall supersede the provisions of this section. (Amended by vote of the people 10-4-94)

Sec. 3.03. Vacancy in the office of town manager.

In the temporary absence or disability of the manager, the manager shall designate, subject to approval of the council a properly qualified person to perform the duties of the manager and the council shall fix his compensation. While so acting, he/she shall exercise the powers and perform the same duties of the manager. During such absence or disability, the council may revoke such designation at any time and appoint another qualified person to serve until the manager shall return or his disability shall cease. No member of the council shall be appointed to serve as manager during such absence or disability.

Sec. 3.04. Powers and duties.

The town manager shall be the chief administrative officer of the town, and shall be responsible to the council for the administration of all town affairs placed in the town manager's charge by or under this charter, and shall have the following powers and duties:

The town manager shall:

- (1) Appoint and prescribe the duties of all statutory officers and department heads and, when necessary for the good of the service, suspend or remove officers and employees of the town appointed by the manager, except as otherwise provided under this charter or by law. The manager may authorize the head of a department or office to appoint, suspend or remove subordinates in such department or office in accordance with personnel rules as may be established by ordinance. All such action conducted in accordance with this subsection shall be reported to the council;
- (2) Direct and supervise the administration of all departments, offices and agencies of the town, except as otherwise provided by this charter or by law;
- (3) Attend all council meetings, except when the manager's removal is being considered, or when excused by the Town Council, and shall have the right to take part in discussion, but may not vote;
- (4) See that all laws, provisions of this charter and acts of the council, subject to enforcement by the manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual proposed budget, incorporating the capital program, to the council and be responsible for budget administration after adoption;
- (6) Prepare and submit to the council as of the end of the fiscal year a complete report on the finances and administrative activities of the town for the preceding year, and cause such annual report to be published and made available to the public as promptly as possible after the close of the fiscal year;
- (7) Make such other reports as the council may require concerning appointments and the operations of town departments, offices and agencies subject to the manager's direction and supervision;
- (8) Keep the council fully advised as to the financial condition and future needs of the town and make such recommendations to the council concerning the affairs of the town as the manager deems advisable;
- (9) Act as purchasing agent for all departments of the town, except the school department, and provide, in case of the school department, for cooperative purchasing arrangements where feasible;
- (10) Prepare an administrative code, submit it to the council and be responsible for its administration after adoption;
- (11) Assist insofar as possible residents and taxpayers in discovering the remedial processes in cases involving complaints of unfair vendor, administrative and governmental practices;

- (12) Perform such other duties as are specified in this charter or may be required by the council; and
 - (13) With the consent of the council, serve as the head of one or more departments, offices or agencies.
- (Amended by vote of the people 10-4-94)

Article IV. Department of Education

Sec. 4.01. Superintending school committee.

- (1) Composition. There shall be a superintending school committee, hereinafter referred to as the school committee, composed of 7 members elected at large by the qualified voters of the town.
- (2) Eligibility. Only qualified voters who at all times during their term of office shall be and remain residents of the town, shall be eligible to hold the office of school committee member. (Amended by vote of the people 10-4-94)

Sec. 4.02. Election and term.

The regular election of school committee members shall be held each year in the manner provided in Article X.

The terms of school committee members in office on the date of the adoption of this amendment shall not be affected by this amendment. Each member shall be elected for a term of 3 years and shall serve until the member's successor is elected and qualified, except that, at the first regular election after adoption of this charter amendment, 3 member positions shall be up for election representing the expiring 3 year term of 1 of the existing members and the 2 additional member positions created pursuant to Sec. 4.01(1). The 3 members-elect receiving the largest number of votes shall serve until the regular election and qualification of school committee members in 1998. In case any candidates receive an equal number of votes, their relative position within the elected terms shall be determined by lot. If the determination by lots would result in one of the tied candidates being denied elective office, a special election shall be held to resolve the tie vote. (Amended by vote of the people 10-4-94)

Sec. 4.02-A. Recall.

- (1) Applicability. A member of the school committee may be recalled and removed from office by the qualified voters of the Town as hereinafter provided. (Added by vote of the people 6-11-02)
- (2) Petition by voters. On the written petition of a number of voters equal to at least 15% of the number of qualified voters registered at the time of the most recent municipal general election, the town council shall, by order, provide for a special recall election as hereinafter provided. (Added by vote of the people 6-11-02)
- (3) Petition procedure; procedure after filing. Petition procedures shall be those set forth in 30-A, MRSA, Sec. 2102, subsections 3 and 4, or any successor statute, except:
 - (a) The required wording in subsection 3.B.(1) shall be as follows:

“Town of Kittery”

“Each of the undersigned voters respectfully requests the town council to provide for a special election on the question of recalling and removal of (insert name and address) from the office of school committee” (Added by vote of the people 6-11-02)

- (b) This required wording is to be followed by a statement of the reasons(s) why recall and removal is sought. (Added by vote of the people 6-11-02)

- (c) Any notice required to be furnished to the petitioners' committee must also be given the committee member whose recall is sought, by the same means and in the same time frame. (Added by vote of the people 6-11-02)
- (4) Calling of election. Within 20 days of receiving the clerk's certificate of sufficiency, or of the town council's determination of sufficiency, the council shall, by order, call for a special election on the recall question, such election to be held not earlier than 45 days nor later than 60 days after the order. (Added by vote of the people 6-11-02)
- (5) Form of ballot. The question submitted to the voters shall be in substance as follows:

"Do you favor recalling and removing (name and address)
from the office of school committee?" YES NO

(Added by vote of the people 6-11-02)
- (6) Count of ballot. For any committee member to be recalled and removed from office, both the following criteria must be satisfied:
 - (a) The majority of valid votes must favor recall and removal.
 - (b) The total number of valid votes cast must equal or exceed 40% of the number of voters registered at the time of the most recent municipal general election. (Added by vote of the people 6-11-02)
- (7) Limitation on recall. During the first 6 months of any term, no committee member shall be subject to a recall election nor shall a committee member be subject to more than 2 recall elections in any term. (Added by vote of the people 6-11-02)

Sec. 4.03. Compensation; expenses.

School committee members shall each be entitled to receive \$20.00 per regular and/or special meeting attended as compensation for their services and the committee may provide in its budget for actual and necessary expenses. Such compensation may be changed by ordinance but no ordinance increasing the compensation shall become effective until the date of commencement of the terms of school committee members elected at the next regular election, provided that such election shall follow the adoption of such ordinance by at least 6 months. (Ord. No. 1-74, 3-11-74; amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 4.04. Chairperson.

- (1) Election. At its first meeting or as soon thereafter as practicable, the school committee shall elect, by majority vote of the entire seven-member committee, one of its members to serve as chairperson for the ensuing year.
- (2) Vacancy. The school committee shall fill any vacancy that may occur in the office of chairperson, from among its members, for the unexpired term by a majority vote of the committee. In the temporary absence or disability of the chairperson, the committee may elect, from among its members, a chairperson pro tempore who shall exercise all the powers of the chairperson during such temporary absence or disability of the chairperson.
- (3) Duties. The chairperson shall preside at meetings of the school committee. The chairperson shall be entitled to vote on school committee matters and that vote shall be counted as a vote of the other members of the committee. (Amended by vote of the people 10-4-94)

Sec. 4.05. General powers and duties.

The school committee shall have all the powers conferred by law and shall perform all the duties imposed by law upon school committees in regard to the care and management of the public schools of the town.

The school committee shall provide for the method of preparing and submitting the annual school budget in detail to the town manager at least 90 days before the beginning of the fiscal year. It shall also submit a complete list of estimated receipts not less than 50 days before the beginning of the fiscal year. As an exception to this rule submission of estimated receipts may be deferred to a later date which may have been mandated for that year by the state legislature or the state board of education. (Ord. No. 14-77, 10-4-77)

Sec. 4.06. Induction of school committee into office.

At the next regular meeting following the day of election, or as soon thereafter as practicable, all committee members-elect shall be sworn to the faithful discharge of their duties by the town clerk or by any other person authorized to administer an oath. (Amended by vote of the people 10-4-94)

Sec. 4.07. Judge of qualifications.

The school committee shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 4.10, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A school committee member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the school committee under this section shall be subject to review by the Superior Court. (Amended by vote of the people 10-4-94)

Sec. 4.08. Procedure.

- (1) Meetings. The school committee shall meet regularly at least once in every month at such times and places as the school committee may prescribe by rule. Special meetings may be held on the call of the chairman or of 3 or more members and, whenever practicable, upon no less than 12 hours' notice to each member as defined by the rules adopted under this section, subsection 2. All meetings shall be public. However, the committee may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the school superintendent or qualified officers and advisors concerned with the matter to be discussed, any matter which qualifies under State statute, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the committee until the matter is placed on the agenda.
- (2) Rules and journal. The school committee shall adopt its own rules and order of business; shall provide for the manner of giving notice of special meetings to its members and to the public; and of keeping a journal of its proceedings. This journal shall be a public record.
- (3) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the school committee shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the school committee. At least 12 hours' notice of the time and place of holding such adjourned meeting shall be given all members who were not present at the meeting from which adjournment was taken. No action of the school committee, except as otherwise provided in the second sentence of this subsection and in section 4.10 shall be valid or

binding unless adopted by the affirmative vote of 4 or more members of the committee. (Amended by vote of the people 10-4-94)

Sec. 4.09. Prohibitions.

Except where authorized by law, no school committee member shall hold any other office or employment with the school department or in a town department during the term for which he/she was elected to the school committee, and no former school committee member shall hold any compensated appointive town or school office or employment until one year after the expiration of the term for which he/she was elected to the school committee.

Sec. 4.10. Vacancies; forfeiture of office; filling of vacancies.

- (1) Vacancies. A vacancy in the office of a school committee member shall occur by one or more of the following means:
 - (a) Nonacceptance;
 - (b) Resignation;
 - (c) Death;
 - (d) Failure to qualify for office within 10 days after written demand by the municipal officers;
 - (e) Failure of the municipality to elect a person to office;
 - (f) Forfeiture of office;
 - (g) Recall and removal; or
 - (h) Any other manner authorized by law or this charter.
- (2) Forfeiture of office. A school committee member shall forfeit office if the committee member:
 - (a) Lacks any qualification for the office prescribed by this charter or by law,
 - (b) Violates any express prohibition of this charter,
 - (c) Is convicted of a crime involving moral turpitude, or
 - (d) Fails to attend 3 consecutive regular meetings of the school committee without being excused by the school committee.
- (3) Filling of vacancies. If for any reason a vacancy shall exist in the membership of the school committee more than 6 months prior to the regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article X. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Article V. Administrative Departments

Sec. 5.01. General provisions.

- (1) Creation of departments. The council shall have power to, by ordinance, create, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter.
- (2) Direction by manager. All departments, offices and agencies under the direction and supervision of the manager may be administered by an officer appointed by and subject to the direction and supervision of the manager.

Sec. 5.02. Personnel system.

- (1) Merit principle. All appointments and promotions of town officers and employees, subject to the direction and supervision of the manager, shall be made solely on the basis of merit and fitness demonstrated by examinations or other evidence of competence.
- (2) Personnel director. The town manager shall be the personnel director.
- (3) Personnel board.
 - (a) There shall be a personnel board consisting of 5 members and 2 or more alternates appointed as hereinbefore provided in this charter. The first appointments to this board shall be made in the following manner: Two members for 3 years, 2 members for 2 years, and one member for one year. All succeeding appointments shall be made for terms of 3 years. Alternates shall be appointed for 3-year terms.
 - (b) The personnel board shall:
 1. Assist the personnel director in developing and updating an administrative code;
 2. Advise the personnel director on issues of personnel management; and
 3. Act as an appeals or grievance board.
- (4) Personnel rules. The personnel director shall prepare personnel rules which the council shall adopt by ordinance with or without amendment. These rules shall provide for:
 - (a) The classification of all town positions, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;
 - (b) A pay plan for all town positions;
 - (c) Methods for determining the merit and fitness of candidates for appointment or promotion, demotion or dismissal;
 - (d) The policies and procedures regulating reduction in force and removal of employees;
 - (e) A retention and retirement plan for all town employees;
 - (f) The hours of work, attendance regulations and provisions for sick and vacation leave;
 - (g) The policies and procedures governing persons holding provisional appointments;
 - (h) The policies and procedures governing relationships with employee organizations;
 - (i) Policies regarding in-service training programs;
 - (j) Grievance procedures, including procedures for the hearing of grievances by the personnel board, which may render advisory opinions based on its findings to the town manager with a copy to the aggrieved employee;
 - (k) Provide for the manner of identifying and bonding personnel as deemed advisable; and
 - (l) Other practices and procedures necessary to the administration of the town personnel system.(Amended by vote of the people 10-4-94)

Article VI. Financial Procedures

Sec. 6.01. Fiscal year.

The fiscal year of the town shall begin on the first day of July and end on the last day of June. (Ord. No. 14-77, 10-4-77)

Sec. 6.02. Submission of proposed budget and budget message.

At least 45 calendar days before the beginning of the fiscal year, the manager shall submit to the council the complete proposed town budget for all the departments, including the school department for the ensuing fiscal year, and an accompanying message. (Ord. No. 14-77, 10-4-77; amended by vote of the people 10-4-94)

Sec. 6.03. Proposed budget message.

The manager's message shall explain the proposed budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the town for the ensuing fiscal year, describe the important features of the proposed budget, indicate any major changes from the current year in financial policies, expenditures and revenues together with the reason for such changes, summarize the town's debt position and include such other material as the manager deems desirable. (Amended by vote of the people 10-4-94)

Sec. 6.04. Proposed budget.

The proposed budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the manager deems desirable or the council shall require. In organizing the proposed budget the manager shall utilize the most feasible combination of expenditure classifications by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the preceding year. It shall indicate in separate sections:

- (1) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;
- (2) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure; and
- (3) The total of proposed expenditures shall not exceed the total of estimated income. (Amended by vote of the people 10-4-94)

Sec. 6.05. Capital program.

- (1) Submission to manager. The town council shall prepare and submit to the manager a 5-year capital program at least 90 calendar days prior to the final date for submission of the proposed budget. (Amended by vote of the people 6-11-02)
- (2) Contents. The capital program shall include:
 - (a) A clear general summary of its contents;
 - (b) A list of all capital improvements which are proposed to be undertaken during the 5 fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
 - (c) Cost estimates, method of financing and recommended time schedules for each such improvement; and
 - (d) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition. (Amended by vote of the people 10-4-94)

Sec. 6.06. Council action on proposed budget.

- (1) Notice and hearing. The council shall publish as soon as possible on the Town's web site, and post in the Municipal Offices, the Kittery U.S. Post Office(s), and the Community Center, the general summary of the proposed budget and a notice stating:
 - (a) The times and places where copies of the message and proposed budget are available for inspection by the public, and
 - (b) The time and place, not less than 14 calendar days after such publication/posting, for a public hearing on the proposed budget.

(Amended by vote of the people 11-3-15)

- (2) Amendment before adoption. After the public hearing, the council may adopt the proposed budget with or without amendment. In amending the proposed budget, it may add or increase programs or amounts and may delete or decrease any program or amounts, except expenditures required by law or for debt service or for estimated cash deficit, provided that no amendment to the proposed budget shall increase the authorized expenditures to an amount greater than the total of estimated income.

(3) Adoption of budget and appropriation. The council shall adopt the budget on or before the first day of July. If it becomes evident to the council that the budget cannot be adopted before the first day of July the council may by resolution extend the adoption deadline by one month. During this one month extension the amount appropriated for operation for the previous year shall be deemed adopted for the current fiscal year with all items in it prorated on the basis of one-twelfth of the previous year's appropriation. After such extension, if the council does not adopt the budget before the first day of August the budget shall be deemed adopted for the ensuing fiscal year as presented. As an exception to this rule final action on the school budget, only, may be deferred to a later date which may have been mandated for that year by the state legislature or the state board of education, and the school department shall continue to operate on the basis of one-twelfth of the previous year's budget per month until final action is taken. The budget shall become effective on the first day of July or immediately upon adoption, whichever shall be later. The amounts stated in the budget as the amount to be raised by property tax shall constitute a determination of the amount of the levy for the purposes of the town in the corresponding tax year and shall become effective on the effective date of the budget or upon the date of final action on the school budget if such date be later. A copy of the entire budget as finally adopted shall be certified by the manager and filed by him with the town assessor, whose duty it shall be to levy such taxes for the corresponding tax year.

Adoption of the budget shall constitute adoption of an ordinance appropriating amounts specified therein from the funds indicated.

- (4) Tax levy. The tax levy shall be adopted by council resolution. (Ord. No. 14-77, 10-4-77; amended by vote of the people 10-4-94)

Sec. 6.07. Bond issues; ballots.

All capital projects which the council, by ordinance, proposes to finance through the issuance of bonds must be submitted to the qualified voters of the town at a regular or special election, after public hearings in the manner and form prescribed in section 2.14 and by law, and shall become effective 30 days after such election, provided a majority of the legal votes cast in such election shall be in the affirmative.

The town clerk shall prepare the necessary ballots for said election.

The question for each project proposed shall be as follows:

"Shall the Town of Kittery council be authorized to issue bonds in a total amount not to exceed for the purpose of"

Yes.... No.... (Amended by vote of the people 6-11-02)

The municipal treasurer shall prepare a signed statement which shall be printed on or accompany each ballot. The statement must set forth:

- (1) The total amount of bonds of the municipality outstanding and unpaid; the total amount of bonds of the municipality authorized and unissued; the total amount of bonds of the municipality contemplated to be issued if the project(s) submitted receive voter approval; and the bonding limit of the municipality;
- (2) A brief and general description of each project together with an estimate and explanation of costs involved including varying interest rates, the estimated cost of interest on the bond amount to be issued, the total cost of principal and interest to be paid at maturity and any other substantive information relating to the debt of the municipality as the treasurer may deem appropriate;
- (3) A statement that the validity of the bonds and of the voters' ratification of the bonds may not be affected by any errors in the estimate made pursuant to paragraph (2). If the actual amount of the total debt service for the bonds varies from the estimate, the ratification by the voters is nevertheless conclusive and the validity of the bonds is not affected by reason of the variance; and
- (4) A listing of proposed revenue sources if the bonds are to be financed, in whole or in part, by other than general property taxes. (Amended by vote of the people 10-4-94)

Sec. 6.08. Public records.

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the town.

Sec. 6.09. Amendments after adoption.

- (1) Supplemental appropriations. If during the fiscal year the manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council by ordinance may make supplemental appropriations for the year up to the amount of such excess, but not to exceed an aggregate amount of \$50,000. (Amended by vote of the people 6-11-02)
- (2) Emergency appropriations. To meet a public emergency affecting life, health, property or the public peace, the council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of section 2.15. To the extent that there are no available unappropriated revenues to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.
- (3) Reduction of appropriations. If at any time during the fiscal year it appears probable to the manager that the revenues available will be insufficient to meet the amount appropriated, he/she shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken by him, and his recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may, by ordinance, reduce one or more appropriations.
- (4) Transfer of appropriations. At any time during the fiscal year or within 60 days of the fiscal year closure, the manager may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon written request by the manager, the council may by ordinance transfer a part or all of any unencumbered appropriation balance from one department, office or agency to another. (Amended by the vote of the people 11-6-07; amended by vote of the people 11-5-13)

- (5) Limitations; effective date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption. (Amended by vote of the people 11-6-07)

Sec. 6.10. Lapse of appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation shall be deemed abandoned if 3 years pass without any disbursement from or encumbrance of the appropriation.

Sec. 6.11. Administration of budget.

- (1) Work programs and allotments. At such time as the manager shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. The manager may revise such allotments during the year if the manager deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriation made pursuant to Section 6.09.
- (2) Payments and obligations prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligations, and the officer shall also be liable to the town for any amount so paid. However, except where prohibited by law, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action was made or approved by ordinance. (Amended by vote of the people 10-4-94)

Article VII. Tax Administration

Sec. 7.01. Assessor.

There shall be established a division of assessment, the head of which shall be the town assessor. The assessor shall be chosen for the assessor's ability with special reference to the assessor's actual experience or the assessor's knowledge of, accepted practices with respect to the duties of the assessor's office. The assessor shall exercise the same powers and be subject to the same duties and liabilities that similar officers of the several towns and cities in the State of Maine may exercise and may now or hereafter be subject to under the laws of the State. (Amended by vote of the people 10-4-94)

State law reference—Powers and duties of assessors, 36 M.R.S.A. § 701, et seq.

Sec. 7.02. Board of assessment review; appointment; vacancies.

There shall be a board of assessment review to consist of 3 members and two alternates, not otherwise connected with town government, who shall be appointed as hereinbefore provided in this charter for a term of 3 years, except that of those first appointed, one shall be for a term of 2 years and one for a term of one year. Vacancies in the membership of such board shall be filled by appointment by the town council for the unexpired term. (Amended by vote of the people 10-4-94)

Sec. 7.03. Board of assessment review; qualifications.

Only qualified voters of the town during the period of their residence in the town who at all times during their term of office shall be and remain residents of the town shall be eligible to serve on the board of assessment review.

Sec. 7.04. Board of assessment review; powers and duties.

The board of assessment review shall have conferred upon it such powers of review and abatement as are conferred upon boards of assessors by statute, and shall have the power to:

- (1) Review on complaint of property owners, and revise assessments for the purpose of taxation of real and personal property within the town limits made by the town assessor;
- (2) Administer oaths;
- (3) Hold hearings; and
- (4) Adopt regulations regarding the procedure of assessment review, not inconsistent with statutory provisions.

The board shall be required to keep an accurate record of all its proceedings, and this record will be available for public inspection.

State law reference—Abatement, 36 M.R.S.A. § 841, et seq.

Sec. 7.05. State statutes.

In the event of any conflict in the provisions of this article with the provisions of any present or future statute relating thereto, the provisions of the statute shall supersede the provisions of this Article.

Article VIII. Planning

Sec. 8.01. Planning board.

- (1) Composition. There shall be a town planning board to consist of 7 members who shall be appointed as hereinbefore provided in this charter and shall have such powers and perform such duties as provided by law.
- (2) Terms. Members shall serve terms of 3 years and until their successors are appointed and qualified.
- (3) Term limits. No member shall serve more than 3 consecutive terms of 3 years. Any member who has served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year. Computation of term limits commences with the first term of 3 years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than 3 years after the effective date. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; amended by vote of the people 6-10-08)

Sec. 8.02. Comprehensive plan.

There shall be a comprehensive plan as provided by law.

Sec. 8.03. Zoning ordinance.

There shall be a zoning ordinance as provided by law.

Sec. 8.04. Board of appeals.

- (1) Composition. The board of appeals, consisting of 7 members appointed as hereinbefore provided in this charter, has such powers and perform such duties as provided by law.
- (2) Terms. Members shall serve terms of 3 years and until their successors are appointed and qualified.
- (3) Term limits. No member shall serve more than 3 consecutive terms of 3 years. Any member who has served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year. Computation of term limits commences with the first term of 3 years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor terms of fewer than 3 years after the effective date. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; amended by vote of the people 6-10-08; amended by vote of the people 11-3-09)

Article IX. Port Authority

There shall be a port authority as provided by special Maine statutes as amended.

Editor's note—The Town of Kittery Port Authority was established by P. & S.L. 1961, Ch. 163, as amended; article IX of the charter is maintained as it was enacted. As you will note, there are no sections designated within the article.

Article X. Nominations and Elections

Sec. 10.01. Municipal elections.

The regular election for the choice of members of the town council and the superintending school committee shall be held on the first Tuesday after the first Monday of November each year, to coincide with the State general elections. (Amended by vote of the people 10-4-94)

Sec. 10.02. Nominations.

Any qualified resident voter of the town may be nominated for the council or superintending school committee in accordance with the statutes of the State of Maine.

State law reference—Nomination by petition, 21-A M.R.S.A. § 351 et seq.

Sec. 10.03. Conduct of elections.

The provisions of the statutes of the State of Maine relating to the qualifications of voters, the registration of voters, the nominations for any office, the manner of voting, absentee voting, the duties of election officers and all other particulars relative to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all elections, except as otherwise provided in this charter. (P. & S.L. 1969, Ch. 23; amended by vote of the people 10-4-94)

State law reference—Elections generally, see 21-A M.R.S.A. § 1 et seq. town meetings and elections, 30-A M.R.S.A. § 2521 et seq.

Sec. 10.04. Election officials.

- (1) The town council shall annually, or at least 10 days before any election, appoint a warden and a clerk, in addition to the regular ballot clerks, for each voting place.

- (2) There shall be a registrar of voters, not otherwise connected with town government, who shall be appointed as hereinbefore provided in this charter, and shall have such powers and perform such duties as provided by law. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Article XI. Initiative and Referendum

Sec. 11.01. General authority.

- (1) Initiative. The qualified voters of the town shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a town election.
- (2) Referendum. The qualified voters of the town shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a town election.

Sec. 11.02. Petition for enactment of ordinances.

Voters of the town may at any time propose the enactment of any lawful ordinance by filing a petition stating the complete text of such ordinance, and signed by a number of qualified voters of the town totaling not less than 10% of the number of qualified voters of the town who cast votes in the previous gubernatorial election with the town clerk. The council shall call a public hearing in the manner prescribed in section 2.14, subsection 2, but to be held within 30 days from the date of the filing of such petition with the town clerk, and shall within 60 days after said public hearing hold a special town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the election, such ordinance shall be enacted by the council in the manner prescribed for ordinances in general. Such ordinance shall take effect in the same manner as ordinances of the same kind adopted by the council, provided a majority of those voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by an attorney for the town before it is submitted to the voters. The attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clarity and precision in its phraseology, but he/she shall not materially change its meaning and effect. (Amended by vote of the people 10-4-94; amended by vote of the people 11-7-2000; amended by vote of the people 6-11-02)

Sec. 11.02(1). Repeat petitions.

Any proposed ordinance, failing enactment by referendum vote may be the subject of a subsequent petition, which, if brought within two years next following the failed vote, shall be governed by the provisions of Section 11.02, except the referendum vote must be held at the next regular election specified in Article X, Sec. 10.01., or at any intervening special election called for any purpose other than the petition itself, provided the petition is filed with the town clerk at least 90 days prior to the date of such election. (Added by vote of the people 6-9-98)

Sec. 11.03. Petition for overrule of action of council.

If, within 30 days after the enactment of any ordinance, a petition signed by a number of qualified voters of the town totaling not less than 10% of the number of qualified voters of the town who cast votes in the previous gubernatorial election is filed with the town clerk requesting its reference to a referendum, the council shall call a public hearing as provided in section 2.14, subsection 2, but to be held within 30 days from the date of the filing of such petition with the town clerk, and shall within 14 days after said public hearing call a special town election for the purpose of submitting to a referendum vote the question of repealing such ordinance. Pending

action by the voters of the town, the referred ordinance shall be suspended upon receipt of the petition by the town clerk until it has received a vote of the majority of the legal votes cast on said question. (Amended by vote of the people 10-4-94; amended by vote of the people 11-7-2000; amended by vote of the people 6-11-02)

Sec. 11.04. Form of ballot.

The form of the ballot for the proposed ordinance (or repeal of ordinance) shall be substantially as follows: Shall the proposed ordinance (or repeal of ordinance) a copy of which is printed herein or attached hereto, be adopted (or repealed)? Yes _____ No _____ (The voters shall indicate by a cross or check mark placed in box under the words YES or NO their opinion of the same.)

Article XII. General Provisions

Sec. 12.01. Financial conflict of interest.

- (1) General standard. All town officials shall attempt to avoid an actual or perceived financial conflict of interest by abstention or disclosure. The Town of Kittery establishes these provisions in addition to those set forth in 30-A M.R.S.A. Sec. 2605. (Added by vote of the people 6-11-02)
- (2) Definitions. For the purposes of this Sec. 12-01 the following definitions apply:
Official means an elected or appointed member of a town board. Family member means an official's spouse, parent, child, sister, brother, stepparent, stepchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and a person with whom any of the foregoing share a committed relationship. Financial interest means any direct or indirect interest involving at least 10% ownership in a public or private economic entity, or direct or indirect ownership or control of real property. (Added by vote of the people 6-11-02)
- (3) Disclosure. If an official or family member has a financial interest in an issue before the official's board, the official shall disclose that interest and:
 - (a) abstain from all board discussion debate, and voting on the issue until concluded, or
 - (b) request a determination be made on the question if the issue involves a financial conflict of interest sufficient to disqualify the member from participation.
 - (c) An official involved in the negotiation or award of a contract does not have a financial conflict of interest when the contract is the result of a publically advertised bid procedure. (Added by vote of the people 6-11-02)
- (4) Determination protocol. Upon disclosure and request for determination, the determination is made by the board members present, excluding the member in question, by majority vote, unless a greater number is required by rule, ordinance, or this charter. If the vote favors disqualification the member is excused from all board discussion, debate, and voting on the issue until concluded and is recorded as abstaining. (Added by vote of the people 6-11-02)
- (5) Record of conflict.
The board chairperson shall make a written summary of any abstention under this section and file the summary with the town clerk. The clerk must maintain this record for a period of 5 years. (Added by vote of the people 6-11-02)
- (6) Penalties.
An official who violates any of the provisions of section 12.01 shall forfeit office and shall be ineligible for a period of 5 years thereafter to hold any town office or position.
The procedures for determination of violation are governed by:
 - (a) Sec. 2.09 applies to town council members;

- (b) Sec. 4.07 applies to school committee members;
- (c) Sec. 2.07 applies to council appointees.
(Added by vote of the people 6-11-02)
- (7) Rights retained.
An official who is excused from an issue due to the provisions of this section retains the right to such participation as is afforded members of the public. (Added by vote of the people 6-11-02)

Sec. 12.02. Code of ethics and prohibited conduct.

- (1) Equal opportunity. No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any town position or appointive town administrative office because of race, gender, age, nationality, handicap, sexual orientation, political or religious opinions or affiliations. (Amended by vote of the people 6-11-02)
- (2) Impartiality. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations. (Amended by vote of the people 6-11-02)
- (3) Wrongful monetary consideration. No person who seeks appointment or promotion with respect to any town position or appointive town administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with any test, appointment, proposed appointment, promotion or proposed promotion. (Amended by vote of the people 6-11-02)
- (4) Political solicitation. No town official shall directly or indirectly, orally, by letter or otherwise solicit or assist in soliciting from any person in the employ of the town any assessment, subscription or contribution for any political party or political purpose whatever. (Amended by vote of the people 6-11-02)
- (5) Withholding information. With the exception of information which is confidential by statute, no town official shall withhold information of any nature relevant to a matter before any board. (Added by vote of the people 6-11-02)
- (6) Use of public resources. No town official shall use public resources that are not available to the general public for private or personal gain, e.g. town staff time, equipment, supplies or facilities. (Added by vote of the people 6-11-02)
- (7) Gifts and favors. No town official shall, by virtue of public office or position, take advantage of services or opportunities for personal gain that are not available to the public in general. Examples of services or opportunities for personal gain are gifts of any kind, favors, promises of future gifts or gain. (Added by vote of the people 6-11-02)
- (8) Penalties. Any person who violates any of the provisions of section 12.02 shall forfeit office or position and shall be ineligible for a period of 5 years thereafter to hold any town office or position.
The procedures for determination of violation are governed by:
Sec. 2.09 applies to town council members;
Sec. 4.07 applies to school committee members;
Sec 2.07 applies to council appointees;
Sec. 3.04 applies to appointees of the town manager.
(Amended by vote of the people 6-11-02)

Sec. 12.03. Summons before town council or school committee.

The clerks of the Supreme Judicial, Superior and District Courts may issue summonses for witnesses to attend and produce books, documents and papers at any meeting of the town council or school committee for the Town of Kittery at which a hearing is had in any matter regarding any alleged dereliction of duty by town officers, officials or employees. (Amended by vote of the people 6-11-02; amended by vote of the people 11-5-13)

Sec. 12.04. Oath of office.

Every official of the town shall, before entering upon the duties of the office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the town clerk:

“I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of Maine; that I will, in all respects, observe the provisions of the charter and ordinances of the Town of Kittery, and will faithfully discharge the duties of the office of _____”

(Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 12.05. Time of meetings.

No town board, including but not limited to the town council, school committee, planning board and board of appeals, may conduct business after 10:00 PM. This deadline may be extended to not later than 11:00 PM by a majority vote of the members present unless a greater number is required by rule, ordinance or this charter. (Added by vote of the people 6-11-02; amended by vote of the people 11-3-09)

Article XIII. Transitional Provisions

Sec. 13.01. Repealing clause.

The following private and special laws of Maine, 1959, chapters 31 and 39, and 1961, chapter 173, and 1963, chapter 160, and all other acts and parts of acts of the private and special laws of Maine relating to the Town of Kittery, inconsistent with the provisions of this charter, are repealed.

Sec. 13.02. Separability.

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby.

Sec. 13.03. Short title.

This charter shall be known and may be cited as the “Council-Manager Charter of the Town of Kittery.” The clerk shall cause it to be printed and made available to the public promptly.

Sec. 13.04. Expiration term of present elected officials.

The terms of all of the present elected town officials, including the school committee, shall expire when their successors are duly elected and inducted into office or appointed and sworn into office in November, 1967.

Sec. 13.05. Officers and employees.

- (1) Rights and privileges preserved. Nothing in this charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are town officers or employees at the time of its adoption.

- (2) Continuance of office or employment. Except as specifically provided by this charter, if, at the time this charter takes full effect, a town administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he/she shall continue in such office or position until the taking effect of some specific provision under this charter directing that he/she vacate the office or position.
- (3) Continuance of members of present boards. Members of all boards and commissions holding office at the time this charter takes effect shall continue in office until their term of office has expired and their successors have been duly appointed and qualified.
- (4) Personnel system. Any employee holding a town position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position, but in all other respects shall be subject to the personnel system provided for in section 5.02.

Sec. 13.06. Departments, offices and agencies.

- (1) Transfer of powers. If a town department, office or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the town department, office or agency designated in this charter or, if the charter makes no provision, designated by the town council.
- (2) Property and records. All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the council in accordance with this charter.

Sec. 13.07. Pending matters.

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the town department, office or agency appropriate under this charter.

Sec. 13.08. Municipal laws.

All town ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto.

REFERENDUM; EFFECTIVE DATE; CERTIFICATE TO SECRETARY OF STATE. This Act shall take effect 90 days after adjournment of the Legislature, only for the purpose of permitting its submission to the legal voters of the Town of Kittery at any special town election to be held on or before the 16th day of October, 1967, and warrants shall be issued for such election in the manner now provided by law for the holding of municipal elections, notifying and warning the qualified voters of said town to meet in said town, there to cast their ballots on the approval or rejection of this Act.

The town clerk shall prepare the required ballots, which shall be substantially as follows:

For the
Charter

Against the
Charter

“Shall `An Act to Grant a New Charter for the Town of Kittery,’
passed by the 103rd Legislature, be accepted?”

☐☐

The voter shall write a cross or check mark in the appropriate box.

This Act shall take effect for the purpose of nominating and electing officers hereunder immediately upon its acceptance by a majority of the legal voters voting at said election, and for all other purposes this Act shall take effect immediately following the first election held under the provisions of this charter on the first Tuesday in November, 1967, with the officers to be installed in office on the 3rd Tuesday of November, 1967.

The result of the vote shall be declared by the municipal officers of the Town of Kittery and due certificate thereof shall be filed by the town clerk with the Secretary of State.

IN HOUSE OF REPRESENTATIVES, _____ 1967

Read three times and passed to be enacted.

Speaker

IN SENATE, _____ 1967

Read twice and passed to be enacted.

President

Approved _____ 1967

Governor

Sec. 13.09. Transitional [budget] provisions.

In order to provide for an orderly transition to a July 1 to June 30 fiscal year the council shall pass before July 1, 1978, an 18-month transitional budget for the period January 1, 1978 to June 30, 1979. The council shall set a date in December 1978 upon which taxes for the twelve months January 1978 through December 1978 become due and payable. The council shall set a date in June 1979 upon which taxes for the first six months of 1979 shall become due and payable. Thereafter the council shall annually set a date in December upon which taxes for the first six months of the current fiscal year shall be due and payable and a date in June upon which taxes for the second six months of the current fiscal year shall be due and payable. (Ord. No. 14-77, 10-4-77)

Article XIV. Town Meeting

Sec. 14.01. Purpose.

The voters of the town reserve to themselves the right to approve certain actions through a vote at a municipal election or town meeting and to that end establish a town meeting with secret ballot as hereinafter provided. (Added by vote of the people 6-11-02; amended by vote of the people 11-6-07)

Sec. 14.02. Governing statute.

The town meeting is governed by the provisions of Titles 30-A and 21-A of the Maine Revised Statutes. (Added by vote of the people 6-11-02; amended by vote of the people 11-3-09)

Sec. 14.03. Town meeting eligibility.

The provisions of Title 30-A to the contrary notwithstanding, only the following are subject to disposition through a municipal election, preceded by a public hearing, or through a town meeting as provided herein:

- (1) Amendment, change, revision or repeal of the comprehensive plan, or adoption of a new comprehensive plan.
- (2) Sale of real property excepting property acquired for non-payment of taxes.
- (3) That part of the capital program which is proposed for the ensuing fiscal year.
- (4) Unless fully-funded by bond issue under Sec. 6.07, or by a dedicated reserve account, any expenditure greater than \$125,000, as long as that expenditure does not cause the unencumbered surplus to fall below an amount equal to the equivalent of 2 ½ months of current year operating budget, per item, project, or an aggregate of same, for:
 - (a) Acquisition of real property;
 - (b) Acquisition of motor vehicles or equipment; or
 - (c) Repair, renovation, or new construction of buildings or structures.
- (5) Unless an emergency appropriation under Sec. 6.09.(2), any appropriation greater than \$125,000:
 - (a) From the unencumbered surplus; or
 - (b) Which is supplemental to the current annual budget.

(Added by vote of the people 6-11-02; amended by vote of the people 11-6-07; amended by vote of the people 11-3-09; amended by vote of the people 6-8-10)

Sec. 14.04. Town meeting.

The town meeting consists of 2 parts, viz: the public hearing and the secret ballot. (Added by vote of the people 6/11/02; amended by vote of the people 11-3-09)

Sec. 14.05. Public hearing.

The public hearing will be held at the regularly scheduled council meeting immediately preceding the second Tuesday in June for open debate with secret ballot vote on the second Tuesday in June. The public hearing must consider the proposed capital program; other issues eligible under Sec. 14.03 may come before the public hearing. (Added by vote of the people 6-11-02; amended by vote of the people 11-3-09)

Sec. 14.06. Voter information.

The town clerk must make provision for a sample ballot to be posted on the town website and at the Municipal Office, the Post Offices at Kittery and Kittery Point and the Solid Waste Facility at least 14 days prior to the public hearing. (Added by vote of the people 6-11-02; amended by vote of the people 11-3-09)

Sec. 14.07. Discontinuance of town meeting.

Voters of the town may at any time propose discontinuance of the town meeting by filing with the town clerk a petition requesting reference to referendum. The petition must be signed by a number of qualified voters of the town totaling not less than 10% of the number of qualified voters of the town who cast votes in the previous gubernatorial election. The council shall call a public hearing in the manner prescribed in section 2.14(2), but to be held within 30 days from the clerk's receipt of the petition, and shall within 60 days after the public hearing hold a special election for the purpose of submitting to referendum the question of discontinuance. If the

majority of legal votes cast at referendum favor discontinuance, the powers vested in the town meeting are conferred upon and exercised by the town council. (Added by voted of the people 6-11-02)

CHARTER COMPARATIVE TABLE

Private and Special Laws			
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1967	66	1.01—13.08	1.01—13.08
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	11-6-2007	6.09, 14.01, 14.03	